

# ***Family Educational Rights and Privacy Act (FERPA)***

for the

# **School Nurse** >>

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# ***Understand/Practice/Model FERPA***

- ▶ ***Identify Essentials***
- ▶ ***Define Key Terms***
- ▶ ***Learn Consent Exceptions***
- ▶ ***Discuss Relations to Other Laws***
- ▶ ***Understand Response to Questions***
- ▶ ***Review Notifications***
- ▶ ***Promote Staff Education***
- ▶ ***Identify Resources***

# ***FERPA***

***20 USC §1232g and 34 CFR Part 99***

- Federal law to protect the privacy of student education records**
- Applies to all schools receiving funds under a U.S. Department of Education program**



# ***Rights of Parents***

- ▶ ***Inspect/Review education records***
- ▶ ***Correct education records***
- ▶ ***Consent disclose education records, except as provided by law***
- ▶ ***File complaint with FPCO***

# ***Rights of Students***

***Transfer to student when they reach 18 years of age or enter a postsecondary institution at any age (“eligible student”)***

# ***School Annual Notification***

- ▶ ***Each educational agency or institution annually notifies parents of students currently in attendance of their rights***
- ▶ ***Notice must inform parents of their rights and procedures***

# Definitions (§99.3)

## Education records

- Directly related to a student
- Maintained by Education agency/party acting on behalf
- Medical or health related records

## Exceptions to education records

- Records in makers sole possession, used only as personal memory aid, and not accessible or revealed to any other person except a temporary substitute for the maker
- Records created and maintained by/for law
- Employee records
- Records student 18 years old or postsecondary
- Records created and received after no longer a student

# **Directory information**

***Information NOT generally considered harmful or a privacy invasion if disclosed***

- ▶ Schools may disclose without consent**
  - ***name, address, telephone, electronic address***
  - ***photographs; date/place of birth***
  - ***grade level***
  - ***participation in official recognized activities/sports***
  - ***weight/height of athletes***
  - ***honors/awards received***
  - ***attendance dates***
- ***Schools notify parent opt-out***

# Disclosure

- ▶ **Permit access to or release, transfer, or other communication of personally identifiable information in education records by any means, including**
  - **oral**
  - **written or**
  - **electronic**
  - **to any party except party identified as provider or creator of the record**



# Personally identifiable information (PII)

- **Student, parent, family members name(s)**
- **Student or family address**
- **Personal identifier** such as student's social security number, student number, or biometric record
- **Other indirect identifiers** such as student's date of birth, place of birth, and mother's maiden name
- **Personal identifiers**
- **Personal characteristics**

# **Record**

- ▶ **Any information recorded, in any way, including but not limited to**

**Hand writing**

**Video or audio tape**

**Print**

**Film**

**Computer**

**Microfiche**

# **Student**

- **Individual who is/has been in school attendance**
- **Individual school maintains education records**

# Generally, written consent required to release information from education records

- **Consent, when required, must**
  - Specify records may be disclosed
  - State disclosure purpose
  - Identify party or class of parties to whom disclosure may be made
  - May be Electronic consent [§99.30(d)]

# **Specific exceptions when personally identifiable information may be disclosed without written consent**

- ▶ **School officials determined to have legitimate educational interests (defined school's annual notification)\***
- ▶ **In a health or safety emergency\***
- ▶ **Organizations conducting studies for or on behalf of the school\***
- ▶ **Directory information (allow parent to not disclose)**
- ▶ **Schools to which a student is transferring**
- ▶ **Parents of a dependent student**

- ▶ **Student financial aid**
- ▶ **Federal/state/local educational authorities conducting accreditation, audit, evaluation, or education enforcement programs**
- ▶ **State/local officials serving student under juvenile justice system (by State law)**
- ▶ **Comply with judicial order/subpoena (reasonable effort to notify) (§99.31)**

# *School Officials*

*Disclosure is to school officials in the agency whom agency has determined to have legitimate educational interests [§ 99.31(a)(1)].*

*Criteria for who is a 'school official' and what is a 'legitimate educational interest' must be included in annual notification of rights (§ 99.7).*

▶ **A contractor, consultant, volunteer, or other party an agency has outsourced services or functions to may be considered a “school official” under FERPA if outside party –**

- *Performs service or function agency would otherwise use employees;*
- *Is under direct control of agency in use and maintenance of education records;*
- *Is subject to requirements governing use and redisclosure of education records PII*

# ***Health or Safety Emergencies***

- ▶ ***Disclosure to appropriate parties in emergency if knowledge protects health or safety of student or others***
- ▶ ***School determines significant threat to health or safety of a student or others, it may disclose information to party whose knowledge is necessary to protect health or safety***
- ▶ ***Based on rational, school documents rationale, evaluation, circumstances in making determination, and parties information is disclosed***



# Organizations Conducting Studies

- ▶ ***Disclosure to organizations for/on behalf of educational agency***
  - Develop, validate, or administer predictive tests
  - Administer student aid programs or
  - Improve instruction
- ▶ ***School must have written agreement with receiving organization***
  - Specifies purpose, scope, study duration, and disclosed information
  - Requires information use only to meet study purpose
  - Requires conducting study not permitting release of parents/ students PII by anyone other than with legitimate interests
  - Requires destroying/returning all PII when no longer needed for study and
  - Specifies time information must be returned/destroyed

# FERPA Amendments

- ▶ CFR new amendments improve access to data, evaluation of education programs, effective resource investment, building on what works and discarding what does not, accountability, and innovation and continuous improvement
- ▶ The amendments ensure students' personal information is used only for legitimate purposes and only when absolutely necessary
- ▶ New resources and guides on website

# Enforcement

- ▶ ***Family Policy Compliance Office (FPCO) reviews, investigates violation complaints, and provides technical assistance to ensure compliance***
- ▶ ***Educational agency with conflict concerns-State or local laws-notifies Office with text/citation of conflicting law***
- ▶ ***Educational agency may be asked to submit reports, policies, procedures, annual notifications, training materials, and other information***
- ▶ ***Enforcement may: Withhold payments; Compel compliance; or Terminate eligibility for funding***

# Interacting Laws with FERPA

## ▶ Health Insurance Portability and Accountability Act (HIPAA)

- HIPAA Privacy Rule **excludes** records protected by FERPA from coverage in definition of “Protected health information” (45 CFR §160.103)
- Some educational agencies providing student health/medical services **may** qualify HIPAA “covered entities”

## ▶ No Child Left Behind (NCLB)

- Provide information to military recruiters
- Transfer discipline records-state determined

## ▶ **Individuals with Disabilities Education Act (IDEA)**

- Additional requirements to FERPA
- Safeguarding records, copies, destruction
- Representative review (attorney)
- Non-custodial parent no rights

## ▶ **Federal Child Abuse Prevention and Treatment Act (CAPTA)**

- State must have law providing reporting of known/suspected child abuse/neglect to receive grant for child abuse prevention/treatment programs

## ▶ **State laws**

- May provide additional rights for parents/students
- May **not** remove any FERPA rights

## ► **Protection of Pupil Rights Amendment (PPRA)**

- Governs student survey administration/analysis/evaluation:
  - **Political affiliations or beliefs**
  - **Mental or psychological problems**
  - **Sex behavior or attitudes**
  - **Illegal, anti-social, self-incriminating demeaning behavior**
  - **Critical appraisals of others with close family relationships**
  - **Legally recognized privileged or analogous relationships**
  - **Religious practices, affiliations, beliefs**
  - **Income**
- Requires offer parents opt out their children:
  - **Survey administration containing 1/more 8 areas**
  - **Certain non-emergency, invasive physical exam/screenings**
  - **Collection, disclosure/use personal information for marketing /selling**

- ▶ **USDA National School Food Program** ‘persons directly connected with administration/ enforcement, need to know, school officials with legitimate educational interest’ -release to as few people as possible [7 CFR Part 245.6(f)]

# FERPA and Public Health

## Responses to Questions

**Q.1. Which law—FERPA or HIPAA—governs** health care records by a school-based health center organized and implemented by school district?

**A.1. Any records a school nurse or health center maintains directly related to a student are considered “education records” subject to FERPA.** Explanation-Joint guidance on FERPA/HIPAA and FERPA/H1N1 guidance. If a person or entity acting on behalf of a school-subject to FERPA, such as a school nurse under contract with, employee of, or otherwise under direct control of school, their student health records are “education records” subject to FERPA. Applies student health care provided on school or off-grounds.



**Q.2. What choices do school nurses or school administrators have divulging information about teen pregnancy to parents/guardians?** Does pregnant student have right to refuse school to notify their parents?

**A.2. Schools are not prohibited by FERPA from disclosing** information about teen pregnancy to parents, even if student requests parents not be notified. If parent requests to inspect/review records maintained by school nurse on their minor child, FERPA would *require* school official to provide parents with opportunity to review records. **Personal knowledge/observation are not governed by FERPA.**

**Q.3. What latitude do school nurses or school administrators have divulging information to parents/guardians concerning other matters,** such as sexually transmitted diseases, infections, and substance abuse?

**A.3. The same principles apply. FERPA requires school officials—including school nurses—provide parents with an opportunity to inspect/review education records on their children.** Education records include health records. If a student is 18 years old or older, rights under FERPA belong to him or her. More than likely student is a dependent for IRS purposes, while a school would not be required to disclose information from education records with parents, they may if parent claims student as a dependent.

**Q.5. How should conflicts among Federal/State laws, organizational policies, professional ethical codes addressing confidentiality be resolved?**

**A.5. FPCO routinely reviews potential conflicts with FERPA.** School officials are required to report potential conflicts to FPCO within 45 days of making a determination there is a conflict. Often what school officials believe are conflicts are not and FPCO can provide advice on how to address the matter. **Ultimately, if there is a conflict and a school wishes to continue to receive U.S. Department of Education funds, it must comply with FERPA.**

**Q.6. If a school wants to contact a child's doctor about an inaccuracy on an excuse note, is written permission required or may doctor be contacted directly?**

**A.6. FERPA, 2008 regulations changed “disclosure” definition to permit a school to contact record source (such as a doctor's note) for verification.** This is NOT disclosure, does NOT violate FERPA, FERPA permits a targeted release of records back to stated source for verification to provide schools flexibility while preserving a more general prohibition on release from education records. Under HIPAA depends on how doctor's note is addressed for doctor to respond. If addressed to school/school official, HIPAA would permit verification. If a generic note, school could demand consent for doctor to disclose information before agreeing to student being legitimately absent. When there is no doctor's excuse note, school officials wishes to call student's doctor and discuss student's medication, restrictions, etc., parent must provide written consent before school official calls doctor and discloses student's education records information.

**Q.7.** Bus drivers in our district are trained in emergency care for certain life-threatening disorders. **Is it legal to provide drivers student names with these types of disorders who may require assistance?** We have been told we can only give a generic overview to drivers, not identifying information unless written parental consent.


**A.7.** School district may determine bus drivers are “school officials” with “legitimate educational interests” so student information can be disclosed to them.

**Q.8. May health records or other education records maintained by a school be disclosed, without consent, to public health department?**

**A.8. Yes, if disclosure meets conditions for FERPA's health or safety emergency exception** to general consent rule. If school officials, taking into account all circumstances, determine a significant threat exists to health or safety of a student or others, may disclose PII from education records without consent to appropriate officials who need information to protect health or safety of student or others. Typically public health officials/trained medical personnel are among types of appropriate parties to whom information may be disclosed under FERPA's health or safety emergency provision.

# FERPA

# Annual Notification



# Model Notification of Rights under FERPA

## Elementary/Secondary Schools

The Family Educational Rights and Privacy Act (FERPA) affords parents and students who are 18 years of age or older ("eligible students") certain rights with respect to the student's education records. These rights are:

1. The right to inspect and review the student's education records within 45 days after the day the [Name of school ("School")] receives a request for access.

Parents or eligible students should submit to the school principal [or appropriate school official] a written request that identifies the records they wish to inspect. The school official will make arrangements for access and notify the parent or eligible student of the time and place where the records may be inspected.



2. The right to request the amendment of the student's education records that the parent or eligible student believes are inaccurate, misleading, or otherwise in violation of the student's privacy rights under FERPA.

Parents or eligible students who wish to ask the [School] to amend a record should write the school principal [or appropriate school official], clearly identify the part of the record they want changed, and specify why it should be changed. If the school decides not to amend the record as requested by the parent or eligible student, the school will notify the parent or eligible student of the decision and of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent or eligible student when notified of the right to a hearing.

3. The right to provide written consent before the school discloses personally identifiable information (PII) from the student's education records, except to the extent that FERPA authorizes disclosure without consent.

One exception, which permits disclosure without consent, is disclosure to school officials with legitimate educational interests. A school official is a person employed by the school as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel) or a person serving on the school board. A school official also may include a volunteer or contractor outside of the school who performs an institutional service of function for which the school would otherwise use its own employees and who is under the direct control of the school with respect to the use and maintenance of PII from education records, such as an attorney, auditor, medical consultant, or therapist; a parent or student volunteering to serve on an official committee, such as a disciplinary or grievance committee; or a parent, student, or other volunteer assisting another school official in performing his or her tasks. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

- ▶ [Optional] Upon request, the school discloses education records without consent to officials of another school district in which a student seeks or intends to enroll, or is already enrolled if the disclosure is for purposes of the student's enrollment or transfer. [NOTE: FERPA requires a school district to make a reasonable attempt to notify the parent or student of the records request unless it states in its annual notification that it intends to forward records on request.]

4. The right to file a complaint with the U.S. Department of Education concerning alleged failures by the [School] to comply with the requirements of FERPA. The name and address of the Office that administers FERPA are:

- ▶ Family Policy Compliance Office, U.S. Department of Education
- ▶ 400 Maryland Avenue, S, Washington, DC 20202
- ▶ [NOTE: In addition, a school may want to include its directory information public notice, as required by §99.37 of the regulations, with its annual notification of rights under FERPA.]
- ▶ [Optional] See the list below of the disclosures that elementary and secondary schools may make without consent.

- ▶ FERPA permits the disclosure of PII from students' education records, without consent of the parent or eligible student, if the disclosure meets certain conditions found in §99.31 of the FERPA regulations. Except for disclosures to school officials, disclosures related to some judicial orders or lawfully issued subpoenas, disclosures of directory information, and disclosures to the parent or eligible student, FERPA regulations requires the school to record the disclosure. Parents and eligible students have a right to inspect and review the record of disclosures. A school may disclose PII from the education records of a student without obtaining prior written consent of the parents or the eligible student
- ▶ To other school officials, including teachers, within the educational agency or institution whom the school has determined to have legitimate educational interests. This includes contractors, consultants, volunteers, or other parties to whom the school has outsourced institutional services or functions, provided that the conditions are met
- ▶ To officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled if the disclosure is for purposes related to the student's enrollment or transfer, subject to the requirements
- ▶ To authorized representatives of the U. S. Comptroller General, the U. S. Attorney General, the U.S. Secretary of Education, or State and local educational authorities, such as the State educational agency in the parent or eligible student's State. Disclosures under this provision may be made, subject to the requirements, in connection with an audit or evaluation of Federal- or State-supported education programs, or for the enforcement of or compliance with Federal legal requirements that relate to those programs. These entities may make further disclosures of PII to outside entities that are designated by them as their authorized representatives to conduct **any audit, evaluation, or enforcement or compliance activity on their behalf.**
- ▶ In connection with financial aid for which the student has applied or which the student has received, if the information is necessary to determine eligibility for the aid, determine the amount of the aid, determine the conditions of the aid, or enforce the terms and conditions of the aid.
- ▶ To State and local officials or authorities to whom information is specifically allowed to be reported or disclosed by a State statute that concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records were released,
- ▶ To organizations conducting studies for, or on behalf of, the school, in order to: (a) develop, validate, or administer predictive tests; (b) administer student aid programs; or (c) improve instruction.
- ▶ To accrediting organizations to carry out their accrediting functions.
- ▶ To parents of an eligible student if the student is a dependent for IRS tax purposes.
- ▶ To comply with a judicial order or lawfully issued subpoena.
- ▶ To appropriate officials in connection with a health or safety emergency,
- ▶ Information the school has designated as "directory information"

# Family Educational Rights and Privacy Act (FERPA)

## Model Notice for Directory Information

*Family Educational Rights and Privacy Act (FERPA)*, a Federal law, requires that [**School District**], with certain exceptions, obtain your written consent prior to disclosure of personally identifiable information from your child's education records. However, [**School District**] may disclose appropriately designated "directory information" without written consent, unless you have advised District to the contrary in accordance with District procedures. The primary purpose of directory information is to allow [**School District**] to include this type of information from your child's education records in certain school publications. Examples include:

- A playbill, showing your student's role in a drama production;
- Annual yearbook;
- Honor roll or other recognition lists;
- Graduation programs; and
- Sports activity sheets, such as wrestling, showing weight and height of team members.

Directory information is information that is generally not considered harmful or an invasion of privacy if released, can also be disclosed to outside organizations without a parent's prior written consent. Outside organizations include, but are not limited to, companies that manufacture class rings or publish yearbooks. In addition, two federal laws require local educational agencies (LEAs) receiving assistance under *Elementary and Secondary Education Act of 1965* (ESEA) to provide military recruiters, upon request, with following information—names, addresses and telephone listings—unless parents have advised LEA that they do not want their student's information disclosed without their prior written consent.

If you do not want **[School District]** to disclose directory information from your child's education records without your prior written consent, you must notify District in writing by **[insert date]**. **[School District]** has designated following information as directory information: **[Note: an LEA may, but does not have to, include all information listed below.]**

- |                          |   |   |
|--------------------------|---|---|
| -Student's name          | -Participation in officially recognized activities/sports |   |
| -Address                 | -Weight/height of members of athletic teams               |   |
| -Telephone               | -Degrees, honors, and awards                              |   |
| -Electronic mail address | -Most recent educational agency attended                  |   |
| -Photograph              | -Student ID number, user ID, or other unique personal     | - |
| Date and place of birth  | identifier used to communicate in electronic systems that | - |
| Major field of study     | cannot be used to access education records without a      |   |
| -Dates of attendance     | PIN, password, etc (A student's SSN, in whole or in part, | - |
| -Grade level             | cannot be used for this purpose.)                         |   |

**Section 9528 of the Elementary and Secondary Education Act (20 U.S.C. § 7908) and 10 U.S.C. § 503(c)**



# FERPA Student Education Records Agreement

» School Staff/Employee/  
Substitute/ Contractor/  
Volunteer- FERPA Privacy/  
Confidentiality /Education  
and Agreement Statement

# **School District**

## **Sample FERPA Student Education Records Agreement**

### **Staff/Employee/Substitute/Contractor/Volunteer**

I, \_\_\_\_\_, in the course of my employment or association with the \_\_\_\_\_ school district, understand printed, electronic, and oral communications concerning ALL student school information is private and confidential. The files, keys to files, computer passwords, and information I am responsible for will be kept confidential. The information may be accessed directly only by certain designated individuals with legitimate purposes. Releases of any student information in print, verbal, electronic, or any other form by unauthorized personnel is a violation of the school district for school employees and contracted service providers. I understand the information is protected under the Family Educational Rights and Privacy Act (FERPA) [and state laws, as applicable].

I have received education and reviewed the district information regarding confidentiality of student school information. I fully understand the intentional release by me of this information to any unauthorized person and improper release of student education information could result in penalties by FERPA, state, and local requirements [loss of funding, discipline, and civil liability where applicable].

I have read, understand, and accept the above statements. If I have any questions concerning the confidentiality of student information, I will consult my supervisor.

School Staff Member Signature

For Official Use

Staff Initials

Date

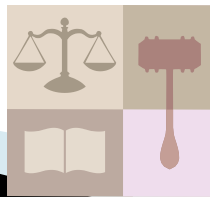
Date



# Resources

<http://www.ed.gov>

- ▶ **Family Educational Rights and Privacy Act (FERPA):** 20 U.S.C. 1232g; 34 C.F.R. § 99, Definition, Application, Summary (Rights, Inspect, Correct, Consent, Directory Information), Contact Information, and link to FPCO  
<http://www2.ed.gov/policy/gen/guid/fpc/ferpa/index.html>
- ▶ **Family Policy Compliance Office (FPCO):** Mission, Featured resources (webinar, FERPA-HIPAA Joint Guidance), Regulations, Overview, Guidance, Model Notification, Hot Topics March 2011 (Notices to LEAs Responsibilities Under FERPA & PPRA, Letter to Superintendents, Model Notification of Rights under FERPA for Elementary and Secondary Schools, FERPA Model Notice Directory Information), and more  
<http://www2.ed.gov/policy/gen/guid/fpc/index.html>



- **FERPA and Public Health**, Ellen Campbell, Family Policy Compliance Office, November 12, 2010  
<http://www2.ed.gov/about/offices/list/osdfs/ferpapubhealth.pdf>
- **FERPA Made Simple: Staff Training on Student Privacy Rights, School Responsibilities.** (2004). LRP Publications. Available for purchase  
<http://www.shoplrp.com/product/p-300177.html>
- ▶ **School Employee/Staff/Contractor/Substitute/Volunteer - FERPA Statement.** Adapted from *Guidelines for Policy and Practice: Confidentiality of Student Information, 1996: Connecticut State Department of Education, Guidelines Protecting Student Health Information*, National Task Force on Confidential Student Health Information, American School Health Association, 2000, and National Forum on Education Statistics. *Forum Guide to Protecting the Privacy of Student Information: State and Local Education Agencies*, NCEC 2004-330 Washington, DC, 2004, [www.edpubs.org](http://www.edpubs.org)

**Contact:** Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-8520